Suppiah v Dewan Bandaraya Kuala Lumpur

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO R8-11-123-1989
EUSOFF CHIN J
14 APRIL 1990

Local Government — Rates — Sale of holding — Arrears of rates not paid at time of completion of sale — Whether buyer liable to pay the arrears — Local Government Act 1976, ss 133, 146 & 160

Words and Phrases — 'Owners of the holdings for the time being' — Local Government Act 1976, s 146

The appellant had bought a property, paying the price for it on 6 August 1986. The transfer of the property was effected at the land office on 28 October 1986. The respondent local authority sent a notice dated 15 December 1986 to the seller of the property requiring him to pay the arrears of rates from 1 July 1985 to 31 December 1986. The notice was received by the appellant at his house. He wrote to the respondent saying that he had bought the property and would try to locate the seller for him to pay the arrears. The appellant also said that, as the new owner of the property, he would be liable to pay rates only from the time that he became the owner of the property. The respondent proceeded in the magistrate's court with attachment of the property in order to recover the arrears. The appellant applied for the release of the attachment but the magistrate dismissed the application. The appellant appealed.

It was contended for the appellant that the previous owner was liable for the payment of the rates up to the date of the sale of the property. For the respondent, it was contended that under the provisions of s 160(5) of the Local Government Act 1976 the appellant was liable to pay all arrears. It was provided in s 146 of the Act that the rates shall be paid by the persons who are the 'owners of the holdings for the time being'.

Held, allowing the appeal:

(1) It is obvious that the person who has to pay the rates is the owner of the property. Under s 133 of the Act, the annual rates are to be paid half yearly in advance by the current owner in January and July of each year. Therefore the words 'owners of the holdings for the time being' in s 146 should be read to mean the owners for the period for which the rates are imposed.

(2) The effect of s 160(4) of the Act is that every seller of a holding shall continue to be liable for the payment of all rates payable in respect of that holding which becomes payable (by him) as owner of the holding before the notice of such transfer has been given to the local authority or until the sale or transfer has been recorded in the books of the municipality.

(3) Subsection (5) of s 160 of the Act should be read in consonance with sub-s 4 of the section. It means that the purchaser of the holding becomes liable to pay the rates the moment the sale is completed. The purchaser cannot be heard to say that his liability runs from the date the notice of sale was sent to the local authority or from the date the transfer of ownership was recorded in the books of the local authority.

(4) The appellant had paid all the rates liable to be paid by him.

[*Editorial Note*: The respondent has appealed to the Supreme Court vide Civil Appeal No 02-234-90.]

Legislation referred to
Local Government Act 1976 ss 133, 146, 160

G Vadiveloo for the appellant.
Krishnan Aiyer for the respondent.

Cur Adv Vult

Eusoff Chin J: The appellant bought a piece of land (together with a dwelling house) OT(M) 134 lot no 245 mukim of Kuala Lumpur, otherwise known as No 41 Jalan Telok Gadang, Kuala Lumpur. The sale price was paid on 6 August 1986, and the transfer of the property was effected by the land office on 28 October 1986.

The Dewan Bandaraya Kuala Lumpur (the respondent) sent a notice dated 15 December 1986 to the previous owner (seller) of the property to pay up arrears of rates from 1 July 1985 to 31 December 1986 amounting to $973. The appellant received the notice at his house. He wrote to the respondent vide letter dated 19 December 1986 to say that he had bought the house and would try to locate the seller to pay the arrears. He also said that he, as the new owner of the property, from 6 August 1986 was liable only to pay rates from the time he became the owner of the property. The respondent proceeded to attach the appellant's property to recover the arrears. The appellant filed an application for the release of the property. The magistrate dismissed the application.

Before me the argument centred on the interpretation of s 160 of the Local Government Act 1976 ('the Act') which states:

> (1) Whenever any rateable holding within a local authority area is sold or transferred it shall be the duty of the seller or transferor and the purchaser or transferee within three months after such sale or transfer to give notice thereof to the local authority in Form I of the First Schedule hereto.
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> (2) Whenever the owner of any rateable holding within a local authority area dies it shall be the duty of the person becoming the owner thereof by succession or otherwise to give notice thereof to the local authority within a period of one year of the death in Form J of the First Schedule hereto.
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> (3) On receipt of such notice the local authority may require the production of the instrument effecting change of ownership or of a certified copy thereof.
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> (4) Every person who sells or transfers any rateable holding within a local authority area shall continue to be liable for the payment of all rates payable in respect of such holding and for the performance of all other obligations imposed by this Part or by any by-law upon the owner of such holding which become payable or are to be performed at any time before notice of such transfer has been given or until the sale or transfer has been recorded in the books of the local authority.
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> (5) Nothing herein shall affect the liability of the purchaser or transferee to pay the rates in respect of such holding or to perform such obligation, or affect the right of the local authority to recover such rate or to enforce such obligation under this Part notwithstanding that such rates became payable or such obligations were imposed before notice of such sale or transfer had been recorded.

(6) Every person failing to give any notice shall on conviction be liable to a fine not exceeding two thousand ringgit or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

Subsection (1) of s 160 of the Act imposes a duty on both the sellers and the purchaser to notify the respondent within three months after such sale or transfer, and if they fail to do so, they run the risk of being prosecuted and upon conviction, sentenced under sub-s (6) of that section.

The appellant's learned counsel says that the previous owner should be made liable for the payment of the rates up to the date of sale of the property. The respondent says that the appellant is liable to pay all arrears under the provisions of sub-s (5) of s 160.

I think it is necessary to examine first the provisions of s 146 of the Act which states:

All rates shall be paid by the persons who are the owners of the holdings for the time being, and until so paid shall, subject to the provisions of the National Land Code, be a first charge on the holdings in respect of which they are assessed, and if not paid within the prescribed time, shall be recoverable in the manner hereinafter prescribed.

It is obvious that the person who has to pay the rates is the owner of the property. Under s 133 of the Act, the annual rates are to be paid half yearly in advance by the current owner in January and July of each year. Therefore the words 'owners of the holdings for the time being' in s 146 should be read to mean the owner for the period for which the rates are imposed. That is what appears to be the intention of Parliament. Otherwise great injustice will be caused to the present owner such as in the case of where a local authority has remained inactive and allowed accumulation of arrears of rates for years by a previous owner and then suddenly slapping the present owner with those arrears.

Coming back to sub-s (4) of s 160 of the Act, as far as it concerns this appeal, that subsection means that every seller of such holding shall continue to be liable for the payment of all rates payable in respect of that holding which become payable (by him) as owner of the holding before the notice of such transfer has been given to the local authority, or until the sale or transfer has been recorded in the books of the Municipality. Subsection (5) of s 160 of the Act should be read in consonance with sub-s (4) of that section. It means, that the purchaser of the holding becomes liable to pay the rates the moment the sale is completed, even though the notice of the sale is sent to the local authority on the last day of or beyond the three months allowed under sub-s (1) of s 160. In other words the purchaser cannot be heard to say that his liability runs from the date the notice of sale was sent to the local authority or from the date the transfer of ownership was recorded in the books of the local authority.

In order to facilitate the local authority to determine the date when the liability of the seller ends and that of the purchaser begins, sub-s (3) of s 160 of the Act gives power to the local authority to require the seller or the purchaser or both of them to produce the relevant document effecting the change of ownership or a certified copy thereof for its inspection.

The appellant here had paid all the rates liable to be paid by him. In the circumstances, I allow the appeal with costs. I further order the property attached by the respondent to be released to the appellant.

Learned counsel for the respondent pointed out that sometimes it is difficult to trace the seller to collect the arrears of rates after the sale was completed. I would suggest that the relevant authorities may wish to recommend an amendment to the Act, so that provisions such as those contained in ss 21A and 21B of the Real Property Gains Tax Act 1986 may be inserted into the Act.

Appeal allowed.

Solicitors: *Vadiveloo & Co; Majid, Krishnan, Menon & Lee.*

Reported by *PS Ranjan*

Hj Abdul Ghani bin Kesah v Tuan Ahmad bin Tuan Man

HIGH COURT (TEMERLOH) — ORIGINATING MOTION NO 25-2-90
LAMIN J
10 APRIL 1990

Civil Procedure — Subordinate courts — Appeal to High Court — Memorandum of appeal — Record of appeal — Period for filing of memorandum and record — Application for extension of time for filing — Mistake of solicitor — Whether sufficient ground shown — Rules of the High Court 1980, O 55 r 2 — Subordinate Courts Rules 1980, O 49 rr 2, 3 & 3A

The appellant filed on 15 January 1990 an application for an order for an extension of time to file the memorandum of appeal and an order to validate the filing of both the memorandum of appeal and the appeal record which was effected on 27 October 1989. The appellant had filed a notice of appeal in respect of a decision of a magistrate. On Friday 22 September 1989, the appellant's solicitors were served with a notice in Form 141 of the Subordinate Courts Rules 1980 that the notes of evidence and the grounds of decision were ready. On 25 September 1989, the solicitors wrote to the appellant asking him to pay to the court the sum of $250 as security for the costs of the appeal and the sum of $65 for the notes of evidence. The appellant paid his solicitors the money only on 5 October 1989 and it was paid to the court the same day. The appellant said that he could not have paid the money earlier because he did not receive his solicitors' letter as